

NOTICE TO EMPLOYEES

§9.12 How will employees learn of their rights?

Where the successor contract is a contract subject to the Executive Order and these regulations, the contracting officer (or designee) will provide written notice to service employees of the predecessor contractor who are engaged in building services of their possible right to an offer of employment. Such notice may either be posted in a conspicuous place at the worksite or may be delivered to the employees individually. Contracting officers may either use the notice set forth in Appendix A to this part or another form with the same information.

Subpart B—What Enforcement Mechanisms does Executive Order 12933 Provide?

COMPLAINT PROCEDURES

§9.100 What may employees do if they believe that their rights under the Executive Order have been violated?

(a) Any employee of the predecessor contractor who believes he or she was not offered employment by the successor contractor as required by the Executive Order and these regulations may file a complaint with the contracting officer of the appropriate Federal agency.

(b) Upon receipt of a complaint, the contracting officer (or designee) shall provide information to the employee(s) and the successor contractor about their rights and responsibilities under the Executive Order. If the matter is not resolved through such actions, the contracting officer shall, within 30 days from receipt of the complaint, obtain statements of the positions of the parties and forward the complaint and statements, together with a summary of the issues and any relevant facts known to the contracting officer, to the nearest District Office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, with copies to the contractor and the complaining employee(s).

(c) If the contracting officer has not forwarded the complaint to the Wage

and Hour Division within 30 days of receipt of the complaint, as required by paragraph (b) of this section, the complainant may refile the complaint directly with the nearest District Office of the Wage and Hour Division.

§9.101 What action will the Wage and Hour Division take to try to resolve the complaint?

After obtaining the necessary information from the contracting officer regarding the alleged violations, the Wage and Hour Division may promptly contact the successor contractor and attempt, through conciliation procedures, to obtain a resolution to the matter which is satisfactory to both the complainant(s) and the successor contractor and consistent with the requirements of the Executive Order and these regulations. The Wage and Hour Division will commence an investigation in accordance with §9.102 of this part if the dispute has not been satisfactorily resolved within 15 days of receipt of the contracting officer's report or the complaint, unless the successor contractor and the complainant(s) agree to a delay in the commencement of the investigation.

§9.102 How are complaints resolved if conciliation is unsuccessful?

(a) Upon receipt of a contracting officer's report or a complaint filed in accordance with §9.100(c) of this part, the Wage and Hour Division, U.S. Department of Labor, will investigate as necessary to gather sufficient data concerning such case unless the dispute has been resolved through conciliation between the parties. Such an investigation will be commenced within 15 days of receipt of the contracting officer's report or the complaint unless conciliation efforts are still underway and the complainant(s) and the successor contractor have agreed to a delay in the investigation so that conciliation efforts may be completed. The Administrator may also initiate an investigation at any time on his or her own initiative. As part of the investigation, the Administrator may inspect the records of the predecessor and successor contractors (and make copies thereof), may question the predecessor

and successor contractors and any employees of these contractors, and may require the production of any documentary or other evidence deemed necessary to determine whether a violation of the Executive Order (including conduct warranting imposition of ineligibility sanctions pursuant to § 9.109 of this part) has been committed.

(b) The contractor and the predecessor contractor shall cooperate in any investigation conducted pursuant to this subpart, and shall not interfere with the investigation or intimidate, blacklist, discharge, or in any other manner discriminate against any person because such person has cooperated in an investigation or proceeding under this subpart or has attempted to exercise any rights afforded under this part.

(c) Upon completion of the investigation, the Administrator shall issue a written determination of whether a violation has occurred which shall contain a statement of findings and conclusions. A determination that a violation occurred shall address appropriate relief and the issue of ineligibility sanctions where appropriate. Notice of the determination shall be given by certified mail to the complainant (if any) and his/her representatives (if any), and to the successor contractor and their representatives (if any).

(d) The Administrator may conduct a new investigation or issue a new determination if the Administrator concludes circumstances warrant, such as where the proceedings before an Administrative Law Judge reveal that there may have been violations with respect to other employees of the predecessor contractor, where imposition of ineligibility sanctions is appropriate, or where the contractor has failed to comply with an order of the Secretary.

§ 9.103 How are decisions of the Administrator appealed?

(a) Except as provided in paragraph (b) of this section, the determination of the Administrator shall advise the parties (ordinarily the complainant (if any), the successor contractor, and their representatives (if any)), that the notice of determination shall become the final order of the Secretary and shall not be appealable in any adminis-

trative or judicial proceeding unless, within 20 days of the date of the determination of the Administrator, the Chief Administrative Law Judge receives a request for a hearing. Any aggrieved party may file a request for a hearing. The request for a hearing shall be accompanied by a copy of the Administrator's determination and may be filed by U.S. mail, facsimile (FAX), telegram, hand delivery, or next-day delivery service. At the same time, a copy of any request for a hearing shall be sent to the complainant(s) or successor contractor, and their representatives, if any, as appropriate; the Administrator of the Wage and Hour Division; and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. The Administrator's failure or refusal to seek ineligibility sanctions shall not be appealable.

(b) If the Administrator concludes that no relevant facts are in dispute, the parties and their representatives, if any, will be so advised and will be further advised that the determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, within 20 days of the date of the determination of the Administrator, a petition for review is filed with the Administrative Review Board pursuant to § 9.107 of this part. The determination will further advise that if an aggrieved party disagrees with the factual findings or believes there are relevant facts in dispute, the aggrieved party may advise the Administrator of the disputed facts and request a hearing by letter, which must be received within 20 days of the date of the determination. The Administrator will either refer the request for a hearing to the Chief Administrative Law Judge, or notify the parties and their representatives, if any, of the Administrator's determination that there is no relevant issue of fact and that a petition for review may be filed with the Administrative Review Board within 20 days of the date of the notice, in accordance with the procedures at § 9.107 of this part.

(c) If any party desires review of the determination of the Administrator, including judicial review, a request for